

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHRISTOPHER LAMONT PETERSON,

Defendant.

CASE NO. CR02-245C

ORDER

This matter comes before the Court on Defendant's Motion for Modification of Sentence (Dkt. No. 25), the Government's Response (Dkt. No. 28), and Defendant's Reply (Dkt. No. 31), as well as the Government's Motion to Seal (Dkt. No. 29). Having considered the papers submitted by the parties and determined that oral argument is unnecessary, the Court hereby finds and rules as follows.

I. FACTS

Defendant was convicted on two counts of bank robbery and this Court found him to be a career offender according to the November 2002 edition of the U.S. Sentencing Guidelines. This Court imposed a 130-month sentence on January 13, 2003 after calculating the range of 151–181 months. No amendments to the relevant Guideline provisions (§§ 2B3.1 (bank robbery), 3D1.4 (multiple counts), and 4B1.1 (career offender)) have occurred since Defendant's sentence was imposed.

1 **II. ANALYSIS**

2 **A. Motion to Modify Sentence**

3 Defendant moves for a modification of his 130-month sentence. Defendant argues in support of
4 such a modification that 18 U.S.C. § 3582(c)(2) allows reduction in his case. Section 3582(c) provides,
5 in relevant part, that

6 the court may not modify a term of imprisonment once it has been imposed except that

7 . . .
(2) in the case of a defendant who has been sentenced to a term of imprisonment based on
8 a sentencing range that has subsequently been lowered by the Sentencing Commission
pursuant to 28 U.S.C. 994(o), upon motion of the defendant or the Director of the Bureau
9 of Prisons, or on its own motion, the court may reduce the term of imprisonment, after
considering the factors set forth in section 3553(a) to the extent that they are applicable, if
10 such a reduction is consistent with applicable policy statements issued by the Sentencing
Commission.

11 18 U.S.C. § 3582(c).

12 In seeking a sentence reduction pursuant to § 3582(c)(2), Defendant argues that (1) the United
13 States Supreme Court’s decision in *United States v. Booker*, 543 U.S. 220 (2005)—which rendered the
14 Sentencing Guidelines advisory rather than mandatory—constitutes a “lowering” of sentencing ranges as
15 contemplated by § 3582(c)(2); and (2) that *Booker* renders § 3582(c)(2) “ambiguous” for purposes of
16 statutory construction, and therefore that this Court should apply the “rule of lenity” in his favor.

17 The Court begins with the language of § 3582(c). “If the intent of Congress is clear from the face
18 of the statutory language, we must give effect to the unambiguously expressed Congressional intent.”
19 *Sloan v. West*, 140 F.3d 1255, 1261 (9th Cir. 1998) (citing *Chevron v. Natural Resources Def. Council*,
20 467 U.S. 837, 842–43 (1984)). The plain language of § 3582(c) discusses reductions *by the Sentencing*
21 *Commission*. On its face, then, § 3582(c) is unambiguous. Further, as discussed *supra*, the Sentencing
22 Commission has done nothing to retroactively change the guideline ranges applied to Defendant’s case.
23 Therefore, upon a plain reading and application, it is clear that this section does not provide a basis to
24 reduce Defendant’s sentence.

25 Moreover, the Court finds that *Booker* caselaw is not the equivalent of a “reduction”

1 contemplated by the plain language of § 3582(c). *See, e.g., United States v. Price*, 438 F.3d 1005, 1007
2 (10th Cir. 2006); *United States v. Moreno*, 421 F.3d 1217, 1220 (11th Cir. 2005). In the words of the
3 *Moreno* court, “*Booker* is a Supreme Court decision, not a retroactively applicable guideline amendment
4 by the Sentencing Commission. Therefore, *Booker* is inapplicable to § 3582(c)(2) motions.” 421 F.3d at
5 1220.

6 Defendant’s argument that the rule of lenity applies is similarly without merit. Defendant
7 contends that § 3582(c)(2) may be interpreted one way pre-*Booker* and another way post-*Booker*.
8 However, because (1) the statute is unambiguous and (2) *Booker* has no bearing on the statute’s
9 interpretation, the Court cannot apply the rule of lenity.

10 Finally, in his Reply, Defendant argues that because the “concept of ‘departures’ has been
11 rendered obsolete in the post-*Booker* world,” *United States v. Arnaout*, 431 F.3d 994, 1003 (7th Cir.
12 2005), the criteria for invoking § 3582(c)(2) has likewise become obsolete. The remedy to that situation,
13 he claims, is to find § 3582(c)(2) “ambiguous” and apply the rule of lenity. Again, this argument is
14 unpersuasive. A court opinion’s subsequent pronouncement (*Booker*) about a system (the Sentencing
15 Guidelines) that is mentioned in a plainly-worded federal statute (§ 3582(c)(2)) does not render that
16 statute “ambiguous” by any stretch of the imagination. The ambiguity question focuses on the language
17 of a statute itself, not on irrelevant law developed elsewhere at a later date.

18 **B. Motion to Seal**

19 The Government’s Motion to Seal requests that the “Presentence Report and all responses and
20 replies in the above-captioned matter, which will be filed under seal subsequent to the filing of this
21 motion, be allowed to remain under seal.” However, only the Presentence Report was sealed. All
22 responses and replies were filed unsealed. Moreover, the Court finds no reason to seal the briefing on
23 Defendant’s motion for modification of his sentence. Only the Presentence Report is properly sealed.
24 Accordingly, the Presentence Report may remain sealed and all other papers on this motion will remain
25 unsealed, as filed.

1 **III. CONCLUSION**

2 For the foregoing reasons, Defendant's Motion for Modification of Sentence is DENIED in its
3 entirety. No modification of Defendant's sentence is authorized or warranted. The Government's
4 Motion to Seal is GRANTED IN PART and DENIED IN PART. Only the Presentence Report may
5 remain sealed.

6 SO ORDERED this 12th day of December, 2006.

7 
8 John C. Coughenour
9 United States District Judge
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